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San Bernardino County

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

MICHAEL NEWMAN,  
  
Plaintiff,  
  
v.

DEPUTY TODD UNDERHILL;  
DEPUTY JONATHAN BARMER;  
SERGEANT OSVALDO PELAYÉS;  
DOE 1; and  
COUNTY OF SAN BERNARDINO,  
  
Defendants.

Case No. 5:23-cv-00033-SP  
The Hon. Sheri Pym

**STIPULATED PROTECTIVE  
ORDER**

1 Pursuant to the stipulation of the parties (Doc. No. 26), the Court hereby  
2 enters the following Stipulated Protective Order.

3 1. A. PURPOSES AND LIMITATIONS

4 Discovery in this action is likely to involve production of confidential,  
5 proprietary, or private information – including confidential personnel records of  
6 peace officers – for which special protection from public disclosure and from use for  
7 any purpose other than prosecuting this litigation may be warranted. Accordingly,  
8 the parties hereby stipulate to and petition the Court to enter the following  
9 Stipulated Protective Order. The parties acknowledge that this Order does not confer  
10 blanket protections on all disclosures or responses to discovery and that the  
11 protection it affords from public disclosure and use extends only to the limited  
12 information or items that are entitled to confidential treatment under the applicable  
13 legal principles. The parties further acknowledge, as set forth in Section 12.3,  
14 below, that this Order does not entitle them to file confidential information under  
15 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
16 standards that will be applied when a party seeks permission from the court to file  
17 material under seal. The parties further acknowledge that nothing in this Order shall  
18 preclude either party from asserting that a document or piece of information is of  
19 such a confidential or private nature that it should not be produced or that it should  
20 be produced in redacted form, or from seeking a separate protective order to  
21 preclude the production of certain documents or pieces of information.

22 B. GOOD CAUSE STATEMENT

23 This action is likely to involve confidential information, including personnel  
24 records of the Defendant peace officers, for which special protection from public  
25 disclosure and from use for any purpose other than prosecution of this action is  
26 warranted. Such confidential information is otherwise generally unavailable to the  
27 public, or may be privileged or otherwise protected from disclosure under state or  
28 federal statutes, court rules, case decisions or common law. Accordingly, to expedite

1 the flow of information, to facilitate the prompt resolution of disputes over  
 2 confidentiality of discovery materials, to adequately protect information the parties  
 3 are entitled to keep confidential, to ensure that the parties are permitted reasonable  
 4 necessary uses of such material in preparation for and in the conduct of trial, to  
 5 address their handling at the end of the litigation, and to serve the ends of justice, a  
 6 protective order for such information is justified in this matter. It is the intent of the  
 7 parties that the information will not be designated as confidential for tactical reasons  
 8 and that nothing be so designated without a good faith belief that it has been  
 9 maintained in a confidential, non-public manner, and there is good cause why it  
 10 should not be part of the public record of this case.

## 11 2. DEFINITIONS

12 2.1 Action: The above-captioned pending federal law suit.

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
 14 information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how  
 16 it is generated, stored or maintained) or tangible things that qualify for protection  
 17 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
 18 Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
 20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or  
 22 items that it produces in disclosures or in responses to discovery as  
 23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of  
 25 the medium or manner in which it is generated, stored, or maintained (including,  
 26 among other things, testimony, transcripts, and tangible things), that are produced or  
 27 generated in disclosures or responses to discovery in this matter.  
 28

1           2.7 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
3 an expert witness or as a consultant in this Action.

4           2.8 House Counsel: attorneys who are employees of a party to this Action.  
5 House Counsel does not include Outside Counsel of Record or any other outside  
6 counsel.

7           2.9 Non-Party: any natural person, partnership, corporation, association, or  
8 other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
10 to this Action but are retained to represent or advise a party to this Action and have  
11 appeared in this Action on behalf of that party or are affiliated with a law firm which  
12 has appeared on behalf of that party, and includes support staff.

13           2.11 Party: any party to this Action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their  
15 support staffs).

16           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this Action.

18           2.13 Professional Vendors: persons or entities that provide litigation support  
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
21 and their employees and subcontractors.

22           2.14 Protected Material: any Disclosure or Discovery Material that is  
23 designated as “CONFIDENTIAL.”

24           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
25 from a Producing Party.

### 26    3.    SCOPE

27           The protections conferred by this Stipulation and Order cover not only  
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
 2 compilations of Protected Material; and (3) any testimony, conversations, or  
 3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the  
 5 trial judge. This Order does not govern the use of Protected Material at trial.

#### 6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations  
 8 imposed by this Order shall remain in effect until a Designating Party agrees  
 9 otherwise in writing or a court order otherwise directs. Final disposition shall be  
 10 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
 11 or without prejudice; and (2) final judgment herein after the completion and  
 12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
 13 including the time limits for filing any motions or applications for extension of time  
 14 pursuant to applicable law.

#### 15 5. DESIGNATING PROTECTED MATERIAL

##### 16 5.1. Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection  
 18 under this Order must take care to limit any such designation to specific material  
 19 that qualifies under the appropriate standards. The Designating Party must take care  
 20 to designate for protection only those parts of material, documents, items, or oral or  
 21 written communications that qualify so that other portions of the material,  
 22 documents, items, or communications for which protection is not warranted are not  
 23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations  
 25 that are shown to be clearly unjustified or that have been made for an improper  
 26 purpose (e.g., to encumber the case development process unnecessarily or to impose  
 27 unnecessary expenses or burdens on other parties) may expose the Designating  
 28 Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it  
 2 designated for protection do not qualify for protection, that Designating Party must  
 3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2. Manner and Timing of Designations.

5 Except as otherwise provided in this Order (see, e.g., second paragraph of  
 6 section 5.2(a), below), or as otherwise stipulated or ordered, Disclosure or  
 7 Discovery Material that qualifies for protection under this Order must be clearly so  
 8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic  
 11 documents, but excluding transcripts of depositions or other pretrial or trial  
 12 proceedings), that the Producing Party affix at a minimum, the legend  
 13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
 14 contains protected material. If only a portion or portions of the material on a page  
 15 qualifies for protection, the Producing Party also must clearly identify the protected  
 16 portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents or materials available for  
 18 inspection need not designate them for protection until after the inspecting Party has  
 19 indicated which material it would like copied and produced. During the inspection  
 20 and before the designation, all of the material made available for inspection shall be  
 21 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
 22 documents it wants copied and produced, the Producing Party must determine which  
 23 documents, or portions thereof, qualify for protection under this Order. Then, before  
 24 producing the specified documents, the Producing Party must affix the  
 25 "CONFIDENTIAL" to each page that contains Protected Material. If only a portion  
 26 or portions of the material on a page qualifies for protection, the Producing Party  
 27 must also clearly identify the protected portion(s) (e.g., by making appropriate  
 28 markings in the margins).

1 (b) for testimony given in depositions that the Designating Party  
 2 identify, before the close of the deposition, all protected testimony that qualify as  
 3 “CONFIDENTIAL.” When it is impractical to identify separately each portion of  
 4 testimony that is entitled to protection, and when it appears that substantial portions  
 5 of the testimony may qualify for protection, the Party or non-party that sponsors,  
 6 offers, or gives the testimony may invoke on the record (before the deposition or  
 7 proceeding is concluded) a right to have up to 20 days after the transcript is certified  
 8 by the reporter to identify the specific portions of the testimony as to which  
 9 protection is sought and to specify the level of protection being asserted  
 10 (“CONFIDENTIAL”). Only those portions of the testimony that are appropriately  
 11 designated for protection within the 20 days shall be covered by the provisions of  
 12 this Order.

13 Transcript pages containing Protected Material must be separately bound by  
 14 the court reporter, who must affix to the top of each such page the legend  
 15 “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring  
 16 the witness or presenting the testimony.

17 (c) for information produced in some form other than documentary,  
 18 and for any other tangible items, that the Producing Party affix in a prominent place  
 19 on the exterior of the container or containers in which the information or item is  
 20 stored the legend “CONFIDENTIAL.” If only portions of the information or item  
 21 warrant protection, the Producing Party, to the extent practicable, shall identify the  
 22 protected portion(s). If such materials are produced only in electronic form (e.g.,  
 23 via file transfer protocol or produced on the same physical drive with other non-  
 24 Protected Materials), to the extent possible the “CONFIDENTIAL” legend shall be  
 25 included in the file or folder name of the Protected Material.

26 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 27 failure to designate qualified information or items does not, standing alone, waive  
 28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of this  
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
6 designation of confidentiality at any time that is consistent with the Court's  
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
11 Designating Party. Frivolous challenges, and those made for an improper purpose  
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
13 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
14 or withdrawn the confidentiality designation, all parties shall continue to afford the  
15 material in question the level of protection to which it is entitled under the  
16 Producing Party's designation until the Court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1. Basic Principles. A Receiving Party may use Protected Material that is  
19 disclosed or produced by another Party or by a Non-Party in connection with this  
20 Action only for prosecuting, defending, or attempting to settle this Action. Such  
21 Protected Material may be disclosed only to the categories of persons and under the  
22 conditions described in this Order. When the Action has been terminated, a  
23 Receiving Party must comply with the provisions of section 13 below (FINAL  
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a  
26 location and in a secure manner that ensures that access is limited to the persons  
27 authorized under this Order.  
28

1           7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
3 Receiving Party may disclose any information or item designated CONFIDENTIAL  
4 only to:

5           (a) the Receiving Party’s Outside Counsel of Record in this Action,  
6 as well as other employees of said Outside Counsel to whom it is reasonably  
7 necessary to disclose the information for this Action;

8           (b) the officers, directors, and employees (including House Counsel)  
9 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

10          (c) Experts (as defined in this Order) of the Receiving Party to  
11 whom disclosure is reasonably necessary for this Action and who have signed the  
12 “Agreement to Be Bound by Protective Order” (Exhibit A);

13          (d) the Court and its personnel;

14          (e) court reporters and their staff;

15          (f) professional jury or trial consultants, mock jurors, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this Action  
17 and who have signed the "Acknowledgement and Agreement to be Bound"(Exhibit  
18 A);

19          (g) the author or recipient of a document containing the information  
20 or a custodian or other person who otherwise possessed or knew the information;

21          (h) during their depositions, witnesses, and attorneys for witnesses,  
22 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
23 party requests that the witness sign the form attached as Exhibit A hereto; and (2)  
24 they will not be permitted to keep any confidential information unless they sign the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
26 agreed by the Designating Party or ordered by the court. Pages of transcribed  
27 deposition testimony or exhibits to depositions that reveal Protected Material shall  
28 be separately bound by the court reporter and may not be disclosed to anyone except

1 as permitted under this Order; and

2 (i) any mediator or settlement officer, and their supporting  
3 personnel, mutually agreed upon by any of the parties engaged in settlement  
4 discussions.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
6 IN OTHER LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation  
8 that compels disclosure of any information or items designated in this Action as  
9 "CONFIDENTIAL," that Party must:

10 (a) promptly notify the Designating Party. Such notification shall  
11 include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or  
13 order to issue in the other litigation that some or all the material covered by the  
14 subpoena or order is the subject of this Protective Order. Such notification shall  
15 include a copy of this Stipulated Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be  
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order in relation to the  
19 subpoena or order issued in other litigation, the Party served with the subpoena or  
20 order shall not produce any information designated in this lawsuit as  
21 "CONFIDENTIAL" before a determination by the court from which the subpoena  
22 or order issued, unless the Party has obtained the Designating Party's permission.  
23 The Designating Party shall bear the burden and the expenses of seeking protection  
24 in that court of its confidential material, and nothing in these provisions should be  
25 construed as authorizing or encouraging a Receiving Party in this action to disobey a  
26 lawful directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
 2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced  
 4 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such  
 5 information produced by Non-Parties in connection with this litigation is protected  
 6 by the remedies and relief provided by this Order. Nothing in these provisions  
 7 should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request,  
 9 to produce a Non-Party's confidential information in its possession, and the Party is  
 10 subject to an agreement with the Non-Party or other provision of law not to produce  
 11 the Non-Party's confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the  
 13 Non-Party that some or all of the information requested is subject to a  
 14 confidentiality agreement with a Non-Party or otherwise subject to legal protection;

15 (2) promptly provide the Non-Party with a copy of this  
 16 Stipulated Protective Order in this Action, the relevant discovery request(s), and a  
 17 reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection by  
 19 the Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this Court  
 21 within 14 days of receiving the notice and accompanying information, the Party  
 22 from whom such information is requested may produce the Non-Party's confidential  
 23 information responsive to the discovery request. If the Non-Party timely seeks a  
 24 protective order, the Party from whom such information is requested shall not  
 25 produce any information in its possession or control that is subject to the  
 26 confidentiality agreement with the non-party or otherwise protected by law before a  
 27 determination by the Court. Absent a court order to the contrary, the Non-Party shall  
 28

1 bear the burden and expense of seeking protection in this Court of its Protected  
2 Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
7 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
8 to retrieve all copies of the Protected Material, (c) inform the person or persons to  
9 whom unauthorized disclosures were made of all the terms of this Stipulated  
10 Protective Order, and (d) request such person or persons to execute the  
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
12 A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain  
16 inadvertently produced material is subject to a claim of privilege or other protection,  
17 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
19 may be established in an e-discovery order that provides for production without  
20 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), the  
21 parties' agreement in their Rule 26(f) Report on the effect of disclosure of a  
22 communication or information covered by the attorney-client privilege or work  
23 product protection is hereby incorporated into this Stipulated Protective Order.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this  
 2 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
 3 ground to use in evidence of any of the material covered by this Protective Order.

4       12.3 Filing Protected Material. A Party that seeks to file under seal any  
 5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
 6 only be filed under seal pursuant to a court order authorizing the sealing of the  
 7 specific Protected Material at issue. If a Party's request to file Protected Material  
 8 under seal is denied by the court, then the Receiving Party may file the information  
 9 in the public record unless otherwise instructed by the Court.

### 10 13. FINAL DISPOSITION

11       After the final disposition of this Action, as defined in section 4 above, within  
 12 60 days of a written request by the Designating Party, each Receiving Party must  
 13 return all Protected Material to the Producing Party or destroy such material. As  
 14 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
 15 compilations, summaries, and any other format reproducing or capturing any of the  
 16 Protected Material. Whether the Protected Material is returned or destroyed, the  
 17 Receiving Party must submit a written certification to the Producing Party (and, if  
 18 not the same person or entity, to the Designating Party) by the 60 day deadline that  
 19 (1) identifies (by category, where appropriate) all the Protected Material that was  
 20 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
 21 copies, abstracts, compilations, summaries or any other format reproducing or  
 22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
 23 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
 24 and hearing transcripts, legal memoranda, correspondence, deposition and trial  
 25 exhibits, expert reports, attorney work product, and consultant and expert work  
 26 product, even if such materials contain Protected Material. Any such archival copies  
 27 that contain or constitute Protected Material remain subject to this Protective Order  
 28 as set forth in Section 4 (DURATION).

14. VIOLATION

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: July 26, 2023

THE LAW OFFICE OF ALEX COOLMAN

By: /s/ Alex Coolman

Alex Coolman  
Attorneys for Plaintiff  
Michael Newman

Dated: July 26, 2023

COLE HUBER LLP

By: /s/ Daniel S. Roberts\*

Daniel S. Roberts  
Jeremiah D. Johnson  
Attorneys for Defendants  
Todd Underhill, Jonathan Barmer, Osvaldo  
Pelayes, and San Bernardino County

\* Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer of this Stipulation attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: August 1, 2023



Hon. Sheri Pym  
UNITED STATES MAGISTRATE JUDGE

## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand the Stipulated  
 Protective Order that was issued by the United States District Court for the Central  
 District of California on \_\_\_\_\_ [date] in the case of Michael Newman v. Deputy  
Todd Underhill, et al., Case No. 5:23-cv-0033 SP. I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and punishment  
 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
 any information or item that is subject to this Stipulated Protective Order to any  
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
 for the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_ [print or  
 type full name] of \_\_\_\_\_ [print or type  
 full address and telephone number] as my California agent for service of process in  
 connection with this action or any proceedings related to enforcement of this  
 Stipulated Protective Order.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_ at \_\_\_\_\_ [city], California.

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_